IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 969 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHVIN RATILAL PAREKH

Versus

GENERAL MANAGER, B S N L

Appearance:

1. Special Civil Application No. 969 of 2004

MR GIRISH K PATEL for Petitioner No. 1

MR DASHRATH N PATEL for Petitioner No. 1

MR YASHWANT S BAROT for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/02/2005

ORAL JUDGEMENT

Rule. Learned advocate Mr.Yashwant Barot waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final

disposal today.

2. In this petition, the petitioner challenges the action of the respondents in not promoting the petitioner to post of Senior TOA. The petitioner who is holding the post of HGTOA was admittedly qualified for consideration for promotion to the post of Senior TOA. In fact, the petitioner was sent for pre-promotion training. However, by the impugned communication dated 1.4.97 it was conveyed that the petitioner has received only 74 marks and his promotion is therefore withheld. It is the case of the respondents that the minimum passing marks were 50 per cent and since the total marks were 150, the petitioner had failed to secure minimum passing marks and he was, therefore, rightly not promoted.

3. In the present petition, the petitioner has questioned his non-promotion. This has however happened in the year 1997. The petitioner has filed the present petition in the year 2004. In the petition, the petitioner has stated that he has made several representations but none of them were replied to. Except filing repeated representations, the petitioner has not taken any concrete steps for agitating his grievances. The fact, however, remains that the petitioner was not promoted on the basis of his result in the examination and till date as stated by the learned counsel for the petitioner, he continues to hold the lower post of HGTOA.

4. Counsel for the petitioner points out that number of other persons who had secured less than 50 per cent i.e. 75 marks were sent for retraining and eventually also promoted.

5. Counsel for the respondents does not deny the averments that some persons who also received less than 75 marks were promoted, however, he submits that the same was done after sending such persons for retraining. From the averments made in the sur-rejoinder, he further submits that one seat for the post of Senior TOA has been allotted vide letter dated 3rd January 2004 for the training of the petitioner.

6. Considering the above factual aspects, it is clear that the petitioner cannot be permitted to agitate the question regarding his non-promotion in the year 1997 by filing the present petition in the year 2004. His right to seek promotion, however, cannot be denied for ever if it is otherwise valid. As noted earlier, the respondents have themselves earmarked one post for the petitioner to be considered after he is sent for

retraining and if he passes the same according to the rules.

7. In the result, the respondents are directed to consider the case of the petitioner for sending him for retraining and if he passes the necessary test after retraining, his case shall be taken up for the post of Senior TOA prospectively. The above exercise may be completed within a period of two months from the date of receipt of a copy of this order. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)